

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT
OF TENNESSEE, NASHVILLE DIVISION

JUDY A. FOSTER,)
vs.)
Plaintiff,)
vs.)
) Civil Action Case No. 3:11-cv-01216
) Judge Haynes/Magistrate Bryant
) JURY DEMAND
) *On the*
SPRING MEADOWS HEALTH)
CARE CENTER, LLC,)
Defendant.)
vs.)
) *In the*
vs.)

MOTION TO DISMISS

Comes now the Defendant, SPRING MEADOWS HEALTH CARE CENTER, LLC, by Tuttle, Metro, Gon'ld, Nashville, 774 E 3d, 307, 317, CC-111, and through counsel, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves this Court to dismiss the Plaintiff's claim under 29 U.S.C. § 621 for discrimination in employment based upon age, as the Plaintiff's Complaint fails to state a claim upon which relief may be granted. In support hereof, Defendant states as follows:

1. Plaintiff has failed to allege facts which would show direct age discrimination or support a *prima facie* case of age discrimination. Specifically, Plaintiff has altogether failed to allege that she was replaced by someone outside of the protected class.
2. Defendant contemporaneously files a Memorandum of Law in support of this Motion.

Wherefore, premises considered, the Defendant prays that the Court find that the Plaintiff's 29 U.S.C. § 621 claim fails to state a claim upon which relief may be granted and should be dismissed with prejudice.